In the United States District Court
for the District of Utah, Central Division

UNITED STATES OF AMERICA, Plaintiff, vs. AGUILAR GILUARDO-PARRA, a.k.a. FREDDIE PARRA-AGUIRE, a.k.a. ALEXIS ROMAN AUGILAR, Defendant.	MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS Case No. 2:03CR554JTG

This matter is before the court on Defendant's Motion to Suppress custodial statements on the grounds they were made in violation of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, (1966). An evidentiary hearing was held on October 30, 2003. The parties submitted memoranda in support of their respective positions, and agreed that if no request for oral argument was made within two days after receipt of the government's response, the matter would be deemed submitted for decision. No request for oral argument has been made by either party, and the matter is deemed submitted on the briefs.

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The court having reviewed and considered the submissions of the parties and the entire record, now issues its Memorandum Decision and Order.

Facts

On July 1, 2003, Officer Bruce Evans of the Salt Lake Police Department went to Jordan River Park in Salt Lake City, Utah, with his partner to assist some narcotics detectives in the take-down of suspected drug dealers. When defendant and his cousin, Able Parra, drove into the park and got out of their vehicle, the officers arrested the suspects at gunpoint. The defendant Aguilar Guiluardo-Parra was placed in handcuffs in the back of a police vehicle while Officer Evans attempted to identify him using a laptop computer database. The defendant had a false-looking drivers license from Mexico with the name Erik Estrada. When nothing came up on the computer under that name, Officer Evans attempted to verify the defendant's name by asking the defendant in Spanish what his name was. The defendant responded with the name Eduardo Aguilar, but the computer didn't verify that name either. Knowing that if a person has been previously arrested, their picture will be in the database, Officer Evans asked if the defendant had ever been arrested. The defendant answered that he had been arrested in California and later changed his answer to Utah. However, Officer Evans was still unable to pull up a picture or otherwise verify identification. He then asked what the defendant had been arrested for. The defendant said that it was for selling drugs. While being transported to the jailhouse, defendant also gave the name of Freddie Parra Aguilar Gia. Like the other names given, Officer Evans was not able to find anything under that name in the computer database. Upon arrival, Officer Evans

told the booking officer that the defendant had supplied three names but that his identity was still unknown. No Miranda warning was given prior to any of these questions. Officer Evans testified that the sole purpose in asking the defendant the questions about his name and background was to identify him.

Sometime thereafter, the defendant was interviewed by one of the DEA agents, Agent Hicken, with the assistance of a Spanish interpreter, Detective Isaac Atencio. Detective Atencio introduced the DEA agent and himself and proceeded to give the Miranda warning, all of which was done in the Spanish language. Detective Atencio was unable to remember the exact words, i.e. the warning as given, but the defendant appeared to understand that the Miranda warning was given to him and said that he did understand. He proceeded to answer questions and denied any involvement. He stated he hadn't been in Utah very long and was looking for work with his cousin. He was asked if he had ever been arrested before and admitted that he had been previously arrested on drug violations.

ARGUMENT

Defendant seeks to suppress statements made at two different points of his encounter with the police on the day he was arrested–first when he was detained in the officers' vehicle and asked several questions by Officer Evans, and second after he was in custody and questioned by Agent Hicken with Detective Atencio as interpreter. Defendant claims in his brief that the Miranda warning was not given in the first instance and Detective Atencio could not remember the exact words of the warning given in the second instance.

The government requests that the court deny defendant's motion because the challenged statements were not incriminating statements under the Fifth Amendment. It is further submitted by the government that any statements made to Officer Evans fall under the exception of routine booking questions, and that the custodial statements made to Agent Hicken and Detective Atencio were subsequent to the defendant being advised of his rights and waiving those rights under Miranda.

A. Statements Made to Officer Evans

The defendant seeks to suppress the statements made in response to Officer Evan's questions about whether or not he had been arrested, where and what for. The government responds that these statements are not incriminating because they are not related to the crime for which the defendant was arrested, nor did Officer Evans seek to elicit any evidence that the defendant had committed the crime in question. The government argues that statements made in violation of Miranda need only be suppressed if they are incriminating.

The Supreme Court has noted that the purpose of the Miranda warning is to assure that the defendant "is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself," and has summarized its own holding in Miranda by saying "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. at 439, 444, 86 S.Ct. at 1609, 1612.

Statements that are not incriminating in nature do not implicate the Fifth

Amendment right against self-incrimination nor would the procedural safeguards of Miranda be necessary. The statements made by the defendant that he had been previously arrested on drug charges are not inculpatory testimony that he is guilty of the present charges against him. Legally, an admission of past arrests is not evidence of present guilt because "[g]uilt must be predicated upon evidence relevant to the offense charged, and not founded upon past crimes." United States v. Temple, 862 F.2d 821, 824 (10th Cir. 1988) (quoting United States v. Dow, 457 F.2d 246, 250 (7th Cir. 1972)). On the other hand, defendant's statements may well be prejudicial, and for that reason such testimony to be admissible in evidence would have to pass muster under the Federal Rules of Evidence including Rule 404(b).[1]

Because the statements made by the defendant to Officer Evans are not incriminating as to the crime for which he was arrested there was no Miranda warning violation and none need have been given to protect the defendant's Fifth Amendment right. But even if this were not the case the statements need not be suppressed because they were made in response to routine booking questions. Such routine questions are exempt from Miranda's requirements because they are necessary to secure "biographical data necessary to complete booking or pretrial

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[1] Fed. R. Evid. 404(b) states:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

services." Pennsylvania v. Muniz, 496 U.S. 582, 601, 110 S.Ct. 2638, 2650 (1990) (internal citation omitted). As in the case of Muniz the questions asked by Officer Evans were "reasonably related to the police's administrative concerns" and were not "designed to elicit incriminatory admissions." Id. at 601-602, 2650, footnote 14. Accordingly, the Motion to Suppress with regard to the statements made to Officer Evans should be denied.

B. Statements Made to Agent Hicken and/or Detective Atencio

Defendant argues that statements made to Agent Hicken of the DEA and/or Detective Atencio should be suppressed because Detective Atencio could not remember the exact words used in the Miranda warning. Defendant did, however, concede in his memorandum that "this is probably largely academic . . . as the evidence indicates that no incriminatory statements were obtained." (Def. Brief at 4).

Detective Atencio did not prepare a report in connection with the interview because he was serving as a translator. However, Agent Hicken took notes and did make a report. Although Detective Atencio could not remember exact words or phrasing in the interview, and could not remember what the defendant was wearing the day he was arrested, he did testify that he gave the Miranda warning in Spanish and recited the warning for the court.

The court is satisfied that the evidence presented was sufficient to show that the defendant was advised of his rights under Miranda. Thus, statements made to Agent Hicken and/or Detective Atencio did not violate Miranda and the Motion to Suppress in this regard should be denied.

Based on the foregoing, defendant has not met his burden of showing that his

Fifth Amendment right against self-incrimination was violated. Accordingly, the Motion to Suppress in all respects is hereby

DENIED.

IT IS SO ORDERED.

DATED this 27th day of January, 2004.

J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

kvs

United States District Court
for the
District of Utah
January 30, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00554

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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